IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.6287 OF 2004

Union of India and others).. Petitioners

Versus

G.S.Kubal).. Respondent

Mr.Suresh Kumar for the Petitioners.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 11TH AUGUST 2004

P.C.:

. The Petitioners have challenged the Award dated 31st December 2002 passed by the Central Industrial Tribunal No.II, Mumbai in Reference No.CGIT-2/33 of 1996 which has set aside the dismissal order issued to the Respondent workman and has directed that the punishment of withholding of two increments with cumulative effect should be imposed on the workman. The Tribunal found that the domestic enquiry conducted against the workman was fair and proper and that the findings of the Enquiry Officer were not perverse. The misconduct alleged against the workman has, therefore, been proved. However, the Tribunal has found that the punishment awarded of dismissal, was shockingly disproportionate.

2. The charge against the workman was of

insubordination and using vulgar language in the office premises against his superiors. Certain other allegations were also levelled against the workman including that he and other workmen had confined their officer P.M.Mathew to his cabin and shouted slogans against him. The other workmen had been punished only by punishment of stoppage of increments and not dismissal. The Tribunal has considered this fact and has held that the punishment imposed by the Petitioners on the Respondent was disproportionate to the misconduct committed by the Respondent workman. The Tribunal has exercised its powers under Section 11A of the Industrial Disputes Act, 1947 and awarded a punishment which is commensurate with the gravity of the misconduct committed by the Respondent workman. Mr.Suresh Kumar relies on the judgment in the case of *U.P.State Road Transport Corpn.* vs. *Subhash Chandra Sharma and others*, **(2000) 3 SCC 324**, where the Apex Court has held that the discretion to be exercised by the Labour Court under Section 11A should not be capricious and arbitrary. I do not find that the exercise of power by the Tribunal under Section 11A is beyond the scope of the Section nor is it arbitrary or capricious.

3. I see no reason to interfere with the Award of the Tribunal. Hence, Writ Petition dismissed.